Supreme Court, U.S.
FILED

05 161 JUL 29 2005

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No. _____

In The

Supreme Court of the United States

LEARIE ARLINGTON DALY,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney General,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Morin v. United States*, 80 F.3d 124 (4th Cir. 1996) the Fourth Circuit found a naturalization application to be "the most compelling evidence of permanent allegiance to the United States" that would establish a permanent resident alien as a "national" of the United States, under section 101(a)(22) of the Immigration and Naturalization Act, 8 U.S.C. § 1101(a)(22).

Whether, a three judge panel of the Fourth Circuit Court of Appeals may depart from this earlier interpretation, on the basis of a contextual distinction, and instead adopt and apply the interpretation of the Ninth Circuit Court of Appeals.

2. *Taylor v. United States*, 495 U.S. 575 (1990) held that Congress intended a sentencing court to employ a categorical approach to determine whether a defendant's prior conviction qualifies as a predicate for sentence enhancement, looking only to the fact of conviction and the elements of the statute of conviction, or to the charging document and the jury instructions to determine whether all of the elements of an offense were necessarily adjudicated in the state court.

Whether, where the defendant upon a charge for felony parental child abuse, and common law battery, has entered a guilty plea to common law battery, there is no contemporaneous record of the guilty plea proceedings and the judgment of conviction reflects a general finding of guilty for common law battery, a court may consider a version of underlying facts found in a document in the court file such as the Application for Statement of Charges/Statement of Probable Cause and, even if the

QUESTIONS PRESENTED – Continued

facts alleged in the document are challenged by the defendant, regard them as sufficiently reliable evidence to determine that the defendant was convicted of a violent version of common law battery that qualifies as "a crime of violence" as defined in section 101(a)(43)(F) of the Immigration and Naturalization Act, 8 U.S.C. § 1101(a)(43)(F).

PARTIES TO THE PROCEEDING

The caption of this Petition contains the only named parties to the instant proceeding.

On March 1, 2003, the INS ceased to exist as an independent agency within the United States Department of Justice, and its functions were transferred to the Bureau of Immigration and Customs Enforcement in the newly formed Department of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296 §§ 2, 101, 331, 442, codified at 6 U.S.C. §§ 101, 111, 251, 252.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Learie Arlington Daly respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., infra., 1-18) is unpublished. The order of the Board of Immigration Appeals (App., infra., 19-25) and the immigration judge's decision (App., infra., 26-36) are also unreported.

JURISDICTION

The decision of the court of appeals was entered on May 2, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 101(a)(3) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(3), *et seq.* states:

> the term "alien" means any person not a citizen or national of the United States.

2. Section 101(a)(22) of the Immigration and Naturalization Act (INA), 8 U.S.C. § 1101(a)(22) states:

> the term "national of the United States" means
>
> (A) a citizen of the United States

or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

3. Section 237(a)(2)(A)(iii) of the Immigration and Naturalization Act (INA), 8 U.S.C. § 1227(a)(2)(A)(iii), states in pertinent part as follows:

Any Alien who is convicted of an aggravated felony at any time after admission is deportable.

4. Section 101(a)(43) of the Immigration and Naturalization Act (INA), 8 U.S.C. § 1101, states in pertinent part as follows:

The term "aggravated felony" means –

(F) crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least 1 year.

18 U.S.C. section 16 defines a "Crime of Violence" as

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.